

Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

In the Matter of

Improving Public Safety Communications in
the 800 MHz Band

Consolidating the 900 MHz Industrial/Land
Transportation and Business Pool Channels

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WT Docket No. 02-55

To: The Commission

COMMENTS OF
MOBILE RELAY ASSOCIATES
ON SO-CALLED “CONSENSUS PLAN”

Mobile Relay Associates (“MRA”), by its attorney and pursuant to Public Notice, *Wireless Telecommunications Bureau Seeks Comment on “Consensus Plan” Filed in the 800 MHz Public Safety Interference Proceeding*, DA 02-2202, released September 6, 2002 (“*Request Notice*”), hereby submits its Comments on the so-called “Consensus Plan.” As discussed below, MRA opposes the mis-named “Consensus Plan”, which is not really a consensus plan, and which would force relocation and disruption upon MRA and similarly-situated small business, analog-only 800 MHz SMR licensees, even though such analog-only SMRs cause no harmful interference. As discussed below, if implemented as currently proposed, the so-called Consensus Plan would wipe out the remaining small business SMR operators in this band while rewarding the entities (primarily Nextel) that have caused the interference to Public Safety which prompted this proceeding.

Description of MRA

MRA is a small, family-owned business operating in California and Colorado. It has been providing service to Part 90 eligibles continuously for over twenty years. Today, MRA holds

numerous SMR licenses used for both internal communications and service to customers, all of which operate analog-only using the same type of system architecture (*i.e.*, high elevation, high-power repeater transmitter, reaching mobile and portable units over a large geographic area) as do most other traditional SMR, B/ILT and Public Safety licensees in the 800 MHz band. MRA causes no harmful interference to other 800 MHz licensees, Public Safety or otherwise.

MRA holds licenses for 34 channels in the 800 MHz band in Colorado. Of these, five channels are in the 854-861 MHz band, but the vast bulk of its licenses, the other 29, are SMR licenses in the 851-854 MHz band.

MRA competes directly with Nextel's digital, cellular-architecture SMR system. Nextel offers a combination of dispatch and cellular service, portable handsets, and a higher price per unit; MRA offers non-interconnect dispatch-only service with either larger portable handsets or vehicular-mounted units, but at a lower price. Significantly, MRA also has the competitive advantage of inertia. That is, the customers have been MRA's customers for many years, and, especially in the case of vehicular units, the units are already installed in all of the fleet's vehicles, so there is no disruption, not even a single day, if the customer simply keeps its business with MRA.

Nextel has been trying to compete against this inertia factor with only limited success; no fleet operator wants to have to bring in its entire fleet for either retuning existing equipment or swapping it out in favor of new equipment. The so-called Consensus Plan would force analog SMR competitors such as MRA to retune, which eliminates Nextel's inertia disadvantage and opens the way for Nextel to win the customers away from the analog SMR competitors.

Summary of MRA's Position

MRA's position in this proceeding may be summarized as follows. Neither MRA nor the similarly-situated small business, analog-only SMR licensees in the 851-854 MHz band (hereafter collectively, the "Small Operators") cause any harmful interference to Public Safety or other users of the 800 MHz band. The Small Operators would obtain no benefit from being forced to migrate to other channels -- in fact, such a requirement would put most or all of them out of business. All of the harmful interference is caused by licensees who operate with a cellular architecture and digital transmissions, and the vast bulk is caused by a single entity, Nextel.

From the filing of its White Paper, Nextel has been attempting to turn a shortcoming (Nextel causing harmful interference to other, protected licensees) into a vehicle to crush its competitors and steal new spectrum from the government. Stated simply, in the guise of "solving interference issues," Nextel is using the regulatory process to get a leg up competitively.

The so-called Consensus Plan constitutes more of the same. In this so-called Consensus Plan, Nextel has made certain revisions to its original proposal, and thereby limited the harm to a smaller universe of innocent parties. In so doing, Nextel has succeeded in obtaining the support of various groups that are no longer being harmed, but there is still no "consensus", and Nextel's proposal is still inconsistent with the public interest.

To accept the so-called Consensus Plan would be to reward Nextel for its past violation of Commission interference protection rules, put MRA and the other Small Operators out of business (with Nextel picking up their customers), and enable Nextel to swap less valuable 700 MHz and 900 MHz spectrum for more valuable 1.9 GHz spectrum on a MHz-pop for MHz-pop basis. All of this would be done to ameliorate (not eliminate) harmful interference which Nextel is causing today in violation of Commission rules. Moreover, because Nextel is proposing that this Plan be

implemented in discrete “stages,” with Nextel acquiring the spectrum now owned by MRA and other Small Operators before that spectrum goes to Public Safety, Nextel may well also wind up with the very 800 MHz spectrum targeted for Public Safety on a semi-permanent basis!

There is no precedent for the Commission requiring an incumbent licensee or group of licensees to relocate without adequate compensation, when the targeted group of licensees has violated no Commission rules. There is no precedent for the Commission to remedy a particular licensee’s repeated rule violations by rewarding the wrongdoer and crushing its competitors. There is no precedent for the Commission to allow a single, favored licensee to obtain otherwise auctionable spectrum by trading in less valuable spectrum. Thus, the proposed so-called Consensus Plan is inconsistent with all precedent and contrary to the public interest.

There is a viable short-term solution, and a viable long-term solution. The short-term solution is to codify the *Best Practices Guide* and to enforce it against Nextel. The long-term solution is to move all of the Public Safety operations into the 700 MHz band, as previously proposed by Cingular and Alltel, once the legacy equipment at 800 MHz has been fully depreciated.

I. Neither MRA nor Other Small Operators Are Causing Harmful Interference

As the so-called Consensus Plan admits, p.8, MRA and the universe of Small Operators cause no harmful interference to Public Safety at 800 MHz. Rather, the problem that Public Safety is incurring is one of intermodulation interference from the operation of digital, cellular architecture systems using multiple, low-power transmitters, and by far the single largest source of interference is one licensee -- Nextel.

The record also contains evidence, primarily from the Project 39 Report and its supplement, that where interference is reported and the procedures of the *Best Practices Guide* are then

implemented, the interference has been able to be resolved on a case-by-case basis. While the *Best Practices Guide* may not necessarily be a long-term solution given the continued growth of Nextel's cellular architecture systems around the country, it appears to be a viable solution for the next three to five years. This is significant, because Public Safety's stated reason for resisting a relocation to 700 MHz is that to do so would prematurely obsolete legacy systems operating at 800 MHz. That concern goes away if the relocation is postponed until those systems are depreciated.

II. The So-Called "Consensus Plan" Is No True Consensus

Nextel's original White Paper was a patently overreaching proposal that threatened other 800 MHz licensees with severe disruptions, forced migrations without compensation, and huge spectrum windfalls for Nextel. Nextel's apparent regulatory clout with the staff of the Wireless Telecommunications Bureau aroused and frightened a whole host of disparate industry sectors. However, that White Paper was a straw man -- Nextel proposed it with the idea that it would be struck down, and that whatever arose in its place would seem mild by comparison.

Nextel's strategy worked. A number of other entities have joined Nextel in signing onto the so-called Consensus Plan as it was filed, including the Public Safety community as well as trade associations whose members' licenses were not primarily in the former "General Category" band which is the target of the so-called Consensus Plan. The reason for Nextel to support this "consensus" is obvious -- Nextel receives a spectrum windfall without having to compete at auction against the cellular and PCS licensees; Nextel no longer need worry about complaints of interference to Public Safety, and Nextel's analog SMR competitors in the 851-854 MHz band will be destroyed and their dispatch customers acquired by Nextel.

The licensees in the 854-861 MHz band support the revised proposal because they saw themselves as being disrupted or destroyed if the Commission were to adopt Nextel's earlier proposal, and this "consensus" spares them from being relocated. It insulates those licensees from the threat that Nextel's White Paper had posed to them.

The 851-854 MHz band consists of channels 1-120, all of which are former "General Category" channels that are allocated exclusively to SMR service. See Section 90.615 of the Commission's Rules. Before these channels were allocated exclusively to SMR, and a major reason for that allocation, was that they were mostly licensed to SMR even when other persons were eligible. As this Commission wrote in the order that made the channels exclusively SMR:

A review of our licensing records indicates that the overwhelming majority of General Category channels are used for SMR as opposed to non-SMR service. In fact, our licensing records indicate that there are three times as many SMR licensees in the General Category channels as any other type of Part 90 licensee.

Amendment of Part 90 of the Commission's Rules to Facilitate the Future Development of SMR Systems in the 800 MHz Band, 11 FCC Rcd. 1463, 1535 (1995) ("800 MHz Competitive Bidding Order").

Thus, virtually none of the other signatories to the so-called Consensus Plan have made any "compromise", or given any "concession" at all. Rather, they have said to Nextel: "If you leave our constituencies untouched and instead stab some other set of licensees in the back, we will sign onto such a plan, as it ensures our own licensees' long-term security." And Nextel agreed, and thus was born the so-called "consensus", which is nothing more than a consensus to gang up on the analog, non-interfering high-site small SMR operators.

To be specific, Industrial/Land Transportation licensees (including Power, Petroleum, Forest Products, Film and Video Production, Relay Press, Special Industrial, Manufacturers, Telephone

Maintenance, Motor Carrier, Taxicab, Railroad and Automobile Emergency licensees) and non-SMR Business Radio licensees populate the spectrum between 854-861 MHz, but not the spectrum between 851-854 MHz, and under the so-called Consensus Plan (unlike the Nextel White Paper) these types of licensees suffer no harm -- they stay where they are currently licensed, operating as they do today, and make no contribution to anyone else's relocation. They gave up absolutely nothing!

The proper analogy is as follows. A kidnapper (Nextel) takes four people (various licensee groups at 851-861 MHz) hostage, and threatens to shoot the hostages unless it receives a ransom (here, the virgin spectrum at 2 GHz). Three of the four hostages (ITA, PCIA, *et al.*) agree with the kidnapper that they will support his effort to get the ransom, so long as he only shoots the hapless fourth hostage (analog SMRs) and leaves the three of them unharmed. The fact that these three hostages are sacrificing the fourth hostage to save themselves is contrary to the public interest (which is to protect ALL innocent hostages), and their support for the kidnapper carries no weight in determining whether the kidnapper deserves the ransom or not.

Nextel, ITA, PCIA, *et al.* falsely contend, Consensus Plan at p. 24, n.68, that the SMRs are also in favor of the so-called Consensus Plan, by virtue of the participation of the SMR trade association, AMTA. AMTA's participation in the so-called Consensus Plan proves nothing respecting the position of SMR licensees other than Nextel. Nextel is AMTA's single largest dues-payer by far, and in this case, where Nextel's interests collided with the interests of AMTA's small, analog-only members such as MRA, AMTA aligned itself with Nextel. MRA knows this from personal knowledge, because MRA principal Mark Abrams sits on the board of directors of AMTA. While MRA understands that AMTA must protect its dues/revenue stream (and thereby the jobs of

its employees), in this case, one must not confuse the position of AMTA with the position of non-Nextel SMR licensees. Those two positions are diametrically opposed.

III. No Precedent Supports the So-Called Consensus Plan

The so-called Consensus Plan contemplates the forced relocation (without compensation) of analog-only incumbent SMR licensees now operating in the 851-854 MHz band. It does so even though the record in this proceeding established that these incumbents have not caused harmful interference to other licensees. It does so even though the record in this proceeding shows these relocated incumbents will derive no benefit from this forced relocation, and even though, as MRA has explained, such a relocation will prompt a massive migration of their customer base over to Nextel when each customer is told that every radio in its dispatch fleet must be brought in for retuning.¹ The so-called Consensus Plan forces the relocation of 851-854 MHz licensees whether they acquired their licenses prior to the advent of auctions or pursuant to the Commission's Auction No. 34.

¹The Consensus Plan contemplates no compensation to analog SMR licensees for the loss of business engendered by the major disruption to their customers and subsequent churn. At page 24, it states that the only cost to analog SMRs is retuning, and implies that even this cost would not be reimbursed.

When the Commission decided to clear a former microwave band for Emerging Technologies (primarily broadband PCS), the Commission required the new, auction-winning licensee in each instance to pay all costs of migration, including not only new infrastructure equipment, but also engineering and design costs, legal and accounting costs, and all other costs attributable to the forced relocation.² In that case, the incumbent licenses were point-to-point, so there was no issue of how to compensate for the loss of retail mobile customers; however, the wording of the Commission's order would imply that had such a cost existed, it would have had to be reimbursed.³

When, in the 800 MHz band, the Commission decided to require the forced relocation of incumbents who did not move voluntarily, the Commission required the new auction winners to reimburse all costs of the forced relocation. There is no precedent where this Commission has required a group of licensees to relocate *en masse* without compensation such as the forced relocation of incumbent 851-854 MHz analog SMR licensees which the so-called Consensus Plan proposes. There is a reason for this dearth of precedent -- to do so constitutes a confiscatory "taking" by the government in violation of the Fifth Amendment of the US Constitution.⁴

IV. From a Policy Standpoint, the Consensus Plan Is Flawed

²*ET First Report and Order*, 7 FCC Rcd. 6886, 6890 (1992).

³*Id.*, 7 FCC Rcd. at 6890, which, for example, said:

The emerging technology provider must guarantee payment of all relocation costs. This includes all engineering, equipment, site, and FCC fees, *as well as any reasonable additional costs that the relocated fixed microwave licensee may incur...* (Emphasis added.)

⁴*Cf. FCC v. Florida Power Corp.*, 480 U.S. 245, 253 (1987), upholding FCC rule as non-confiscatory, but indicating that a confiscatory rule would run contrary to the "takings" clause.

Aside from the constitutional violation involved, this proposed forced relocation makes no policy sense. To the extent that harmful interference exists, Nextel is causing it. To punish incumbent 851-854 MHz SMR licensees such as MRA for Nextel's rule violations, while declining to punish Nextel, is the epitome of arbitrary and capricious action.

Contrary to its claims, the Consensus Plan does not minimize disruption to existing licensees. Inherently, systems that serve internal users, such as Industrial/Land Transportation, Business (non-SMR), and Public Safety, can bring in their respective fleets (which the licensee controls) easily and without disruption. Indeed, in most such cases, the vehicles return to a central point co-located with the maintenance facility at the end of each work shift. Importantly, with internal fleets, there is no potential for users to churn off the system due to the involved disruption.

In contrast, subscriber-based service licensees, such as SMRs, do not control their "fleets", which consist of multiple, unaffiliated customers, who take their vehicles home after a work shift, and not to their carrier's maintenance facility. Those unaffiliated customers are not likely to accept the inconvenience or down time involved with bringing in their independent fleets for retuning. MRA's experience is that at least one-third of subscribers churn off a system when such retuning occurs (*e.g.*, when a channel is sold voluntarily and the customers are tuned to a new channel).⁵

To minimize disruption, relocation should be concentrated in those services that do not serve subscribers, rather than services (such as SMR) that exist precisely to serve subscribers. The public interest would be much better served by using the three MHz block between 855-858 MHz, rather

⁵Of course, when MRA or any other SMR assigns a channel voluntarily, it can factor this inevitable subscriber loss into the price of the channel being sold. Small Operators would not be able to do so under the forced assignments called for by the so-called Consensus Plan.

than the block between 851-854 MHz. Using this upper channel block would eliminate the need to disrupt (and to compensate for disruption and churn of) SMR subscriber/customers.

V. There Is No Rational Basis for Nextel's Proposed Spectrum Swap

Nextel holds a hodge-podge of site-specific and auction spectrum at 800 MHz. Sometimes Nextel holds a site-specific license for a given frequency but not the EA auction license, sometimes it owns the EA auction license but not the site-specific license, sometimes it owns both, and sometimes the involved spectrum was not subject to auction. However, in putting forward its various proposals over time, Nextel has consistently pretended that it holds all rights to a channel within an EA whenever it held either a site-specific license or an EA license (but not both), even if there are co-channel licensees within the involved EA. The "Appendix B" to the Consensus Plan is simply more of the same.⁶

Through this subterfuge Nextel has claimed to have 2.5 MHz of 800 MHz spectrum to trade for other 800 MHz spectrum. To this ephemeral 2.5 MHz, Nextel adds 4 MHz of 700 MHz spectrum that it purchased previously, as well as approximately 3.8 MHz of 900 MHz spectrum. (This 900 MHz spectrum also is a hodge-podge of site-specific and auction spectrum, where there are co-channel licensees existing in at least some of the EA markets that Nextel is claiming to own.)

Other than the supposed 2.5 MHz of 800 MHz spectrum, there is no apparent public interest reason for Nextel to be offering any of this spectrum back to the FCC. The so-called Consensus Plan states that any migration by incumbent 800 MHz licensees into either 700 MHz or 900 MHz

⁶As discussed, *infra*, Nextel's lack of sufficient spectrum within the 800 MHz band will result in the Consensus Plan only being partially implemented -- the part where Nextel gains the 851-854 MHz spectrum now owned by independent SMRs will go through, but the part where Nextel conveys that spectrum to Public Safety will not go through.

spectrum would be “voluntary”, and neither MRA nor any other incumbent of whom MRA is aware wants to migrate there. So apparently the FCC would just get to sit there with this 700 MHz and 900 MHz spectrum that Nextel would be exchanging.

And that is the key -- Nextel is not “giving” anything back to the FCC. Rather, Nextel is proposing to exchange less valuable spectrum at 700 MHz and 900 MHz (even though such spectrum is at best tangential to the so-called Consensus Plan’s implementation) in exchange for exceedingly more valuable 2 GHz spectrum.⁷ Even assuming, for the sake of argument, that the 800 MHz relocation portion of the so-called Consensus Plan were not completely arbitrary and capricious, there would be no rational basis for the Commission to agree to take Nextel’s 700 MHz and 900 MHz to implement that “Plan”, and no rational basis for the Commission to give Nextel a chunk of virgin CMRS spectrum at 2 GHz that is statutorily required to be licensed by auction.⁸

VI. The Commission Should Balance the Benefits and Costs; and Reject Forced Relocation of Innocent SMR Licensees

As noted in Part I, *supra*, although the record shows that Nextel is gradually causing more and more harmful interference to Public Safety, at least so far, even Nextel’s interference has been susceptible to cure on a case-by-case basis when the affected Public Safety entity has alerted Nextel and the involved parties have adhered to the procedures in the *Best Practices Guide*. Thus, at least in the short term, the bulk of the harmful interference can be ameliorated or eliminated simply by

⁷That this 2 GHz spectrum is not so valuable today because it is currently allocated as a reserve for the Mobile Satellite Service is irrelevant. Nextel is proposing that this spectrum be reallocated to CMRS use, and its value must be assessed on the assumption that such reallocation is part of the package.

⁸Indeed, the mere presence of this spectrum exchange proposal within the so-called Consensus Plan exposes that “Plan” for the sham that it is.

codifying the *Best Practices Guide* as a rule, without incurring the substantial disruption and cost that would accompany large-scale relocations. As a long-term solution, the so-called Consensus Plan is a failure, because so long as Public Safety entities remain in an 800 MHz band shared with myriad other users, there will always be some level of interference, and because the use of digital, cellular-architecture systems at 800 MHz is only going to continue to increase over time.

The only viable long-term solution is that proposed by Cingular and Alltel -- obtaining Congressional authority to move Public Safety into its own spectrum at 700 MHz, and relocating it there once the current legacy 800 MHz Public Safety infrastructure has been fully depreciated. The supposed drawbacks of this solution are overstated. It is said that Congressional action is needed, but even the Consensus Plan would require Congressional action to authorize millions in taxpayer dollars to compensate the many small business operators such as MRA that would be forced out of business (without which taxpayer compensation the "Plan" would be unconstitutional and could never be implemented).

It is also said that 700 MHz is not viable unless and until the current UHF broadcasters migrate off that spectrum. However, that migration is scheduled for 2006, which should coincide nicely with the full depreciation of legacy 800 MHz Public Safety systems and the commencement of the next generation of Public Safety infrastructure purchases. Indeed, there is a bill now pending in Congress introduced by Chairman Tauzin and ranking Democrat Dingell that would render December 31, 2006 as a hard and fast date for 700 MHz to be available to Public Safety.⁹ Given that CTIA and very powerful companies stand ready to lobby in support of the relocation of Public Safety to 700 MHz, and this solution is fair and reasonable, such legislation stands a very strong

⁹See *Communications Daily*, Vol. 22, No. 183 (September 20, 2002) at p.1.

chance of succeeding. Moreover, incumbent broadcasters cover only a portion of the United States today; especially west of the Mississippi, there are huge regions without any broadcast incumbent.¹⁰

In summary, if the Commission were to undertake a cost-benefit analysis, the proposal to require mass relocations to ameliorate but not eliminate an interference problem that is still going to require a different long-term solution, would never pass muster. This Commission should resist falling prey to the panic being engendered by Nextel, and should eschew the so-called Consensus Plan in favor of less expensive but still effective and fair solutions.

VII. The “Staged” Implementation of the Consensus Plan Is a Spectrum Grab

¹⁰Even if some compensation were required for displaced broadcasters to ensure they leave by 2006, then this Commission needs to at least assess whether that could be done less expensively compared to the cost and disruption of mass relocations at 800 MHz. In this regard, a displacement of a broadcaster would not affect its viewers who are cable subscribers, only those with older televisions that receive the signal over-the-air, a substantial minority of viewers. It would probably be much cheaper to buy each such viewer a HDTV set than it would be to require these massive forced SMR licensee relocations contemplated by the Consensus Plan.

Consensus Plan Comments, p.14

In Part A.2 of the so-called Consensus Plan, at pp.11-15, Nextel describes a staged implementation of the Consensus Plan. In step one, any pre-existing Public Safety at 851-854 MHz trades out of that band for other Nextel spectrum, and Nextel gets the 851-854 MHz spectrum. In step two, the non-interfering analog-only SMRs such as MRA are forcibly relocated, and hand their existing 851-854 MHz spectrum to Nextel (not to Public Safety or the FCC)! Third, non-Nextel EA licensees that outbid Nextel at auction are forcibly required to assign their 851-854 MHz spectrum to Nextel. Nextel becomes the new EA licensee even though Nextel lost in the recent auction.¹¹

As the Consensus Plan notes, p.14, “Completion of these steps will result in Nextel temporarily occupying 100% of the 806-809/851/854 MHz band in preparation for the relocation of the NPSPAC channels.” Nextel will have 100% of this spectrum -- nationwide. And “temporarily” appears to be a very long time in this case, because after Nextel obtains all this spectrum, Nextel parcels it out, region by region, as and when it finishes coordinating a particular region with Public Safety and funds are raised for the relocation of Public Safety. Consensus Plan, pp.19-21.

Nextel’s pledge of \$500,000,000 is probably not even enough for one region. Once those funds are depleted, relocation ceases “temporarily”, and Nextel gets to keep using the 851-854 MHz band indefinitely in all other regions.

Even if, hypothetically, the Consensus Plan were otherwise rational, it is irrational to require the relocation of incumbent SMRs and non-Nextel EA licensees off their spectrum in any region of

¹¹At this time, thanks to the pendency of this proceeding, it is virtually impossible for any non-Nextel EA licensee to obtain financing to construct a cellularized SMR system to compete with Nextel, because no lender could prudently lend money to construct such a system when it is subject to this forced relocation in the near future. Thus, even if the Consensus Plan is not adopted, Nextel will have succeeded in stifling competition from such EA licensees for a significant period.

the country unless and until the funds are received to pay for all relocation costs within that region.

Otherwise, the “staged” implementation of the Consensus Plan becomes nothing more than a spectrum grab by Nextel, which undermines the integrity of this Commission.

CONCLUSION

The record in this proceeding demonstrates overwhelmingly Nextel causes virtually all of the harmful interference received by Public Safety at 800 MHz, which harm could be greatly ameliorated in the near term by Nextel’s stricter adherence to the procedures of the *Best Practices Guide*. Independent SMR licensees operating in a traditional (non-cellular architecture) manner in the 800 MHz band are not causing harmful interference.

The vast bulk of non-cellular architecture licensees in the 851-854 MHz band are small SMRs such as MRA that compete with Nextel in the business of offering fleet dispatch service. Far from “benefitting” from any forced relocation, these small companies will almost certainly be forced out of business by any such forced relocation. Their dispatch customers would become Nextel’s dispatch customers, resulting in a windfall for Nextel.

The Fifth Amendment of the US Constitution prohibits the government, including this Commission, from taking private property without just compensation. That limitation on governmental power precludes the forced taking of incumbent licenses from innocent persons to ameliorate a harm being caused by an unaffiliated third person. Moreover, to engage in such a prohibited taking while simultaneously handing a special benefit to the wrongdoer is arbitrary and capricious as a matter of policy. Additionally, the Consensus Plan targets only subscriber-based licensees (analog SMRs) for relocation, when it is inherently more disruptive to relocate subscribers

(who are not affiliates or employees of the licensee) than it is to relocate fleets of internal vehicles.

In the name of catering to more powerful lobbying groups, the Consensus Plan actually thereby maximizes disruption to existing users. Thus, the so-called Consensus Plan should not be adopted.

The mere fact that Nextel's earlier proposal threatened so many other Part 90 constituencies, and that Nextel has now inveigled support from these other groups by offering, as a "compromise", to harm only SMRs and not other Part 90 licensees, is irrelevant. The Commission should not measure the worth of a proposal by the number of signatories. One of the greatest merits of the American political system is that it protects the minority from the tyranny of the majority. Rather, the Commission should measure the worth of any proposal by whether it punishes the innocent or rewards the wrongdoer. By that measure, the Consensus Plan fails.

The "staged" implementation of the Consensus Plan calls for innocent SMR and non-Nextel EA licensees to assign their spectrum to Nextel without any assurance whatsoever that the relinquished spectrum would ever be assigned by Nextel to Public Safety (the ostensible reason for therefor). As such, it amounts to a spectrum grab by Nextel. If the Commission were to agree to such an unfair procedure, then all future auction bidders will refrain from purchasing spectrum at auction and devote their resources instead to acquiring the spectrum through lobbying.

The Commission should immediately codify the procedures in the *Best Practices Guide* and start to enforce them, as a near term solution. It should move with the private sector to relocate Public Safety to the 700 MHz band as a longer term solution. In any event, before the Commission decides to require forced SMR relocations at 800 MHz, the Commission must first analyze the costs and benefits involved, including without limitation methods of freeing 700 MHz spectrum from incumbent broadcasters by 2006.

Respectfully submitted,
MOBILE RELAY ASSOCIATES

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